

**From:** [Pease, Jeffrey \(EOIR\)](#)  
**To:** [All of CLAD \(EOIR\)](#); [All of Judges \(EOIR\)](#); [All of OCIJ JLC \(EOIR\)](#); [Allen, Patricia M. \(EOIR\)](#); [Anderson, Jill \(EOIR\)](#); [Baptista, Christina \(EOIR\)](#); [Bauder, Melissa \(EOIR\)](#); [Berkeley, Nathan \(EOIR\)](#); [BIA ATTORNEYS \(EOIR\)](#); [BIA BOARD MEMBERS \(EOIR\)](#); [BIA TEAM JLC](#); [BIA TEAM P \(EOIR\)](#); [Brazill, Caitlin \(EOIR\)](#); [Burgie, Brea \(EOIR\)](#); [Burgus, Elizabeth \(EOIR\)](#); [Calvert, Irvina \(EOIR\)](#); [Cardenas, Lupe \(EOIR\)](#); [Carr, Donna \(EOIR\)](#); [Cicchini, Daniel \(EOIR\)](#); [Cowles, Jon \(EOIR\)](#); [Crossley, Maurice \(EOIR\)](#); [Cudo, Relanie \(EOIR\)](#); [Curry, Michelle \(EOIR\)](#); [D'Angelo, Matthew \(EOIR\)](#); [Evans, Brianna \(EOIR\)](#); [Gonzalez, Robert \(EOIR\)](#); [Grodin, Edward \(EOIR\)](#); [Hammond, Nicole \(EOIR\)](#); [Hartman, Alexander \(EOIR\)](#); [Hess, Chris \(EOIR\)](#); [Kaplan, Matthew \(EOIR\)](#); [King, Jean \(EOIR\)](#); [Korniluk, Artur \(EOIR\)](#); [Lang, Steven \(EOIR\)](#); [LERS, EOIR \(EOIR\)](#); [Lovejoy, Erin \(EOIR\)](#); [Martinez, Casey L. \(EOIR\)](#); [Mitchell, Carla \(EOIR\)](#); [Morteo, Cristina \(EOIR\)](#); [Noferi, Mark \(EOIR\)](#); [O'Hara, Shelley M. \(EOIR\)](#); [Park, Jeannie \(EOIR\)](#); [Podgorski, Monika \(EOIR\)](#); [Powell, Karen B. \(EOIR\)](#); [Ramirez, Sergio \(EOIR\)](#); [Rimmer, Phillip \(EOIR\)](#); [Robbins, Laura \(EOIR\)](#); [Rodrigues, Paul A. \(EOIR\)](#); [Rodriguez, Bernardo \(EOIR\)](#); [Rothwarf, Marta \(EOIR\)](#); [Sanders, John W. \(EOIR\)](#); [Santoro, Christopher A \(EOIR\)](#); [Schaaf, Joseph R. \(EOIR\)](#); [Smith, Terry \(EOIR\)](#); [Stutman, Robin M. \(EOIR\)](#); [Swanwick, Daniel \(EOIR\)](#); [Taufa, Elizabeth \(EOIR\)](#); [Vayo, Elizabeth \(EOIR\)](#)  
**Cc:** [McHenry, James \(EOIR\)](#); [Reilly, Katherine \(EOIR\)](#); [Sheehy, Kate \(EOIR\)](#); [Alder Reid, Lauren \(EOIR\)](#); [Moutinho, Deborah \(EOIR\)](#); [Adams, Amanda \(EOIR\)](#); [Pease, Jeffrey \(EOIR\)](#); [Morgan, Kenosha \(EOIR\)](#); [Macri, Andrea \(EOIR\)](#); [EOIR Library \(EOIR\)](#)  
**Subject:** Policy & Case Law Bulletin - September 14, 2018  
**Date:** Friday, September 14, 2018 6:00:49 PM

**EXECUTIVE OFFICE FOR  
IMMIGRATION REVIEW**  
Office of Policy | Legal Education and  
Research Services Division

| Policy & Case Law Bulletin  
September 14, 2018

### Federal Agencies

#### DOJ

- [BIA Issues Decision in Matter of Valenzuela Gallardo](#) — EOIR

27 I&N Dec. 449 (BIA 2018)

(1) An “offense relating to obstruction of justice” under section 101(a)(43)(S) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(43)(S) (2012), encompasses offenses covered by chapter 73 of the Federal criminal code, 18 U.S.C. §§ 1501–1521 (2012), or any other Federal or State offense that involves (1) an affirmative and intentional attempt (2) that is motivated by a specific intent (3) to interfere either in an investigation or proceeding that is ongoing, pending, or reasonably foreseeable by the defendant, or in another’s punishment resulting from a completed proceeding. [Matter of Valenzuela Gallardo](#), 25 I&N Dec. 838 (BIA 2012), clarified. (2) A conviction for accessory to a felony under section 32 of the California Penal Code that results in a term of imprisonment of at least 1 year is a conviction for an aggravated felony offense relating to obstruction of justice under section 101(a)(43)(S) of the Act.

- [Attorney General Delivers Remarks to Largest Class of Immigration Judges in History](#) — EOIR

On September 10, 2018, Attorney General Jeff Sessions presented opening remarks to a training class consisting of 44 new Immigration Judges and two new Assistant Chief Immigration Judges at EOIR Headquarters in Falls Church, Virginia.

- [Virtual Law Library Weekly Update](#) — EOIR

This update includes resources recently added to EOIR’s internal or external Virtual Law Library, such as Federal Register Notices, country conditions information, and links to recently-updated immigration law publications.

## International

UN

- [UNHCR Issues Position on Returns to Libya \(Update II\)](#)

In early September, 2018, UNHCR issued its “Position on Returns to Libya (Update II),” which “provides an update of and replaces the UNHCR Position on Returns to Libya (Update I) published in October 2015.” The document states that “[t]he current situation in Libya is characterized by political and military fragmentation, hostilities between competing military factions, the proliferation of armed groups and a general climate of lawlessness, as well as a deteriorating human rights situation.” Additionally, “UNHCR urges all States to suspend forcible returns to Libya until the security and human rights situation has improved considerably.”

## Second Circuit

- [Khalid v. Sessions](#)

No. 16-3480-AG, 2018 WL 4353877 (2d Cir. Sept. 13, 2018) (Derivative U.S. Citizenship)

The Second Circuit granted the PFR, concluding that Khalid’s temporary physical separation from his father created by Khalid’s pretrial juvenile detention following his arrest for allegedly conspiring to provide material support for terrorism, did not prevent Khalid from satisfying the “physical custody” requirement of 8 U.S.C. § 1431(a), and that consequently, Khalid obtained derivative citizenship from his father, who became a naturalized U.S. citizen shortly after Khalid’s arrest. Since Khalid is a U.S. citizen, the court remanded with instructions to terminate Khalid’s removal proceedings.

- [United States v. Pereira-Gomez](#)

No. 17-952-CR, 2018 WL 4260270 (2d Cir. Sept. 7, 2018) (Crime of Violence)

The Second Circuit affirmed the district court’s judgment, concluding that attempted robbery in the second degree in violation of N.Y. Penal Law §§ 110.00 and 160.10, as well as robbery or attempted robbery in any degree under New York law, are “crimes of violence” under the “force clause” pursuant to U.S.S.G. § 2L1.2 (“use of force” language same as in U.S.S.G. § 4B1.2(a)(1), and 18 U.S.C. § 16(a)). The court reasoned that “that definition of robbery – forcible stealing – is common to all degrees of robbery under New York law.”

## Fifth Circuit

- [United States v. Davis](#)

No. 16-10330, 2018 WL 4268432 (5th Cir. Sept. 7, 2018) (Crime of Violence)

On remand from the Supreme Court in light of [Sessions v. Dimaya](#), 138 S. Ct. 1204 (2018), the Fifth Circuit affirmed its prior judgment that the defendants’ convictions for Hobbs Act robbery in violation of 18 U.S.C. § 1951, and for illegally using or carrying a firearm in relation to a crime of violence in violation of 18 U.S.C. § 924(c) are crimes of violence under the “elements clause,” pursuant to 18 U.S.C. § 924(c)(3)(A) (analogous to 18 U.S.C. § 16(a)). Following its precedent in *United States v. Buck*, 847 F.3d 267 (5th Cir. 2017) (holding that “[i]t was not error—plain or otherwise—” to classify Hobbs Act robbery as a crime of violence under the § 924(c) elements clause), the court declined to extend *Dimaya* to the defendants’ convictions, reasoning that “*Dimaya* only addressed, and invalidated, a residual clause mirroring the residual clause in § 924(c); it did not address the elements clause.”

## Sixth Circuit

- [United States v. Camp](#)

No. 17-1879, 2018 WL 4265749 (6th Cir. Sept. 7, 2018) (Crime of Violence)

The Sixth Circuit concluded that Camp's conviction for Hobbs Act robbery in violation of 18 U.S.C. § 1951(a), using a firearm during a crime of violence in violation of 18 U.S.C. § 924(c), is a crime of violence under the "use of force" clause, pursuant to 18 U.S.C. § 924(c)(3)(A) (analogous to 18 U.S.C. § 16(a)). Applying the categorical approach, the court concluded that Hobbs Act robbery did not qualify as predicate crime of violence under the "use of force" clause of U.S.S.G. § 4B1.2(a)(1), which is analogous to 18 U.S.C. § 16(a). The court relied on the Tenth Circuit's decision in *United States v. O'Connor*, 874 F.3d 1147 (10th Cir. 2017), which the court summarized as holding "Hobbs Act robbery does not have as an element the use or threatened use of force against the person, as is required under the Guidelines' use-of-force clause."

## Ninth Circuit

- [Chen v. Sessions](#)

No. 13-73786, 2018 WL 4268437 (9th Cir. Sept. 7, 2018) (unpublished) (Controlled Substances; Aggravated Felony)

The Ninth Circuit denied the PFR, concluding that Chen's conviction for cultivation of marijuana in violation of Cal. Health & Safety Code § 11358 qualifies as a "felony drug offense" under 21 U.S.C. § 802(44) and therefore is a drug trafficking aggravated felony, as defined by section 101(a)(43)(B) of the Act. The court also concluded that the Board did not abuse its discretion in affirming the IJ's conclusion that Chen's conviction constituted a particularly serious crime based on "the seriousness and recency of the respondent's criminal offense and the large quantity of marijuana plants involved."

- [United States v. Garcia-Lopez](#)

No. 15-50366, 2018 WL 4262459 (9th Cir. Sept. 7, 2018) (Crime of Violence)

The Ninth Circuit concluded that in light of [Sessions v. Dimaya](#), 138 S. Ct. 1204 (2018) and related Ninth Circuit case law, Garcia-Lopez's conviction for robbery, in violation of Cal. Penal Code § 211, does not constitute a "crime of violence" pursuant to 18 U.S.C. § 16. Relying on *United States v. Dixon*, 805 F.3d 1193 (9th Cir. 2015) (holding that California robbery is not a categorical match to 18 U.S.C. 924(e)(2)(B)), the court concluded California robbery is not a "crime of violence" pursuant to 18 U.S.C. § 16(a). Since the robbery conviction was the sole charge underlying Garcia-Lopez's illegal entry indictment and his removal order, the court vacated the district court's order and remanded with instructions to permit Garcia-Lopez to withdraw his guilty plea.

## Tenth Circuit

- [United States v. Muthara](#)

No. 18-3024, 2018 WL 4339574 (10th Cir. Sept. 11, 2018) (unpublished) (Naturalization)

The Tenth Circuit affirmed the district court's order revoking Muthara's U.S. citizenship and canceling his certificate of naturalization because he willfully misrepresented the number of children he had on his naturalization application and during the naturalization interview, and for lack of good moral character where he provided false testimony related

to his naturalization application.

### Eleventh Circuit

- [Islam v. U.S. Att’y Gen.](#)

No. 17-15439, 2018 WL 4236290 (11th Cir. Sept. 6, 2018) (unpublished) (Motions)

The Eleventh Circuit denied the PFR, concluding that “the immigration judge did not abuse his discretion by refusing to further delay Islam’s removal hearing [after granting three prior continuances] when [Islam’s attorney] failed to appear at the hearing or to explain in her motion why a continuance was necessary when she was familiar with Islam’s case and the documents relating to his applications for relief.” The court further concluded that “[s]ubstantial evidence supports the finding that Islam failed to provide credible evidence of his identity,” where he “failed initially to produce any identification, and the identification card that he later submitted appeared to be fraudulent.”